

**TRANSCRIPT OF PROCEEDINGS**  
**BEFORE THE**  
**FEDERAL COMMUNICATIONS COMMISSION**  
**WASHINGTON, D.C. 20554**

In the Matter of:

Maritime Communications/Land Mobile, LLC

EB Docket No. 11-71

Participant in Auction No. 61 and Licensee of  
Various Authorizations in the Wireless Radio  
Services

Applicant for Modification of Various  
Authorizations in the Wireless Radio Services

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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IN THE MATTER OF:	:	EB Docket No.
	:	11-71
MARITIME COMMUNICATIONS/	:	
LAND MOBILE, LLC	:	File No.
	:	EB-09-IH-1751
Participant in Auction No.	:	
61 and Licensee of Various	:	FRN:
Authorizations in the	:	0013587779
Wireless Radio Services	:	
	:	Application
Applicant for Modification	:	File Nos.
of Various Authorizations in	:	0004030479,
the Wireless Radio Services	:	0004193028,
	:	0004193328,
Applicant with ENCANA OIL	:	0004354053,
AND GAS (USA), INC.; DUQUESNE	:	0004309872,
LIGHT COMPANY, DCP MIDSTREAM,	:	0004310060,
LP; JACKSON COUNTY RURAL	:	0004314903,
MEMBERSHIP ELECTRIC	:	0004315013,
COOPERATIVE; PUGET SOUND	:	0004430505,
ENERGY, INC.; ENBRIDGE ENERGY	:	0004417199,
COMPANY, INC.; INTERSTATE	:	0004419431,
POWER AND LIGHT COMPANY;	:	0004422320,
WISCONSIN POWER AND LIGHT	:	0004422329,
COMPANY; DIXIE ELECTRIC	:	0004507921,
MEMBERSHIP CORPORATION, INC.;	:	0004526264,
and ATLAS PIPELINE-MID	:	and
CONTINENT, LLC;	:	0004604962
	:	
For Commission Consent to	:	
the Assignment of Various	:	
Authorizations in the	:	
Wireless Radio Service	:	

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Tuesday,  
November 4, 2014

VOLUME 10

Courtroom TWA-363  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

The above-entitled matter came on for hearing, pursuant to notice, at 10:00 a.m.

## BEFORE:

RICHARD L. SIPPEL,  
Chief Administrative Law Judge

APPEARANCES:

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## INDEX

Opening Statements

None

Closing Statement

None

Witnesses

None

EXHIBITS

<u>FCC EB</u>	<u>Identified</u>	<u>Received</u>	<u>Rejected</u>
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Maritime Communications

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Hearing Began: 10:06 a.m.      Hearing Ended: 11:56 a.m.



## P-R-O-C-E-E-D-I-N-G-S

10:06 a.m.

JUDGE SIPPEL: This is an admissions session in the Maritime case 11-71. And I'm going to just quickly note who's present and ask people I don't know. I see Ms. Kane and Mr. Engel are here from the Bureau.

MR. ENGEL: Yes, Your Honor.

MS. KANE: Yes, Your Honor.

JUDGE SIPPEL: I gather Mr. Keller is here, but he's out attending to --

MR. STENGER: He's in the lobby.

JUDGE SIPPEL: -- boxes?

MR. STENGER: Yes. Correct.

JUDGE SIPPEL: Okay. And, Mr. Kirk, I see you're here.

MR. KIRK: Yes, Your Honor.

JUDGE SIPPEL: Okay. And Mr. Stenger is here.

MR. STENGER: Yes.

JUDGE SIPPEL: Good morning, sir.

MR. STENGER: Good morning.

JUDGE SIPPEL: And we've got, is that Mr. -- who is that, Mr. Richards?

MR. SHELDON: Jeffrey Sheldon.

JUDGE SIPPEL: Beg your pardon?

MR. SHELDON: Jeffrey Sheldon.

JUDGE SIPPEL: Jeffrey Sheldon, from what party?

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1 MR. SHELDON: Representing Puget Sound Energy.

2 JUDGE SIPPEL: Puget Sound. Okay, Mr. Sheldon. Okay. And  
3 that's it, we don't have anybody else from the Assignee parties?

4 MR. STENGER: The Assignee party I believe is --

5 JUDGE SIPPEL: Well, yes, I've got Mr. -- yes, Mr. Kirk.  
6 But no, I'm thinking of the parties who are waiting to be assigned  
7 the licenses. Maybe that's the wrong terminology.

8 MR. STENGER: No, you're right. Pinnacle is not here, and  
9 Evergreen is not here, and Duquesne is not here.

10 JUDGE SIPPEL: I got that, yes. Okay. All right. That's  
11 Puget Sound. Is that right?

12 MR. SHELDON: Yes.

13 JUDGE SIPPEL: Thank you, sir. Okay. I'm just trying to  
14 keep this in track. What has happened is that we were working  
15 diligently yesterday with these 408 exhibits, and we realized after  
16 a time, this is after we had alerted all the parties to bring in  
17 exhibits to hand up to the reporter, that we weren't going to  
18 handle it the way that we had set out to handle it. We have another  
19 approach that we think will work, we're convinced will work. And,  
20 unfortunately, the reversal information didn't get to the parties  
21 early enough.

22 Now, we caught you, Mr. Stenger, and you were able to  
23 retrieve your boxes. Am I correct on that?

24 MR. STENGER: No, sir.

25 JUDGE SIPPEL: No?

1 MR. STENGER: All my boxes are waiting outside. If your  
2 solution does not require my boxes, then I can tell my messenger to  
3 leave with them.

4 JUDGE SIPPEL: Well, that's exactly what -- now let me --  
5 before you do that. But, yes, that's exactly what -- where we are.  
6 But if -- and he's sitting out there with the exhibits. Right?

7 MR. STENGER: Yes, Your Honor.

8 JUDGE SIPPEL: The security situation here is beyond  
9 belief. Your exhibit -- we were not expecting you to have -- I'm  
10 sorry. For the record, this is Mr. Keller on behalf of Maritime,  
11 sir. We were not expecting you to have multiple --

12 MR. KELLER: Well, I assumed we were going to be talking  
13 about admissibility on other exhibits today so I need the exhibits  
14 to refer to as we go along.

15 JUDGE SIPPEL: These will be the exhibits of?

16 MR. KELLER: Well, everybody's exhibits, the Bureau's, Mr.  
17 Stenger's, my one exhibit.

18 JUDGE SIPPEL: That's -- we were thinking of you with the  
19 one. All right. That was --

20 MR. KELLER: And my boxes came through security, but  
21 they're sitting down here apparently needing to sit in the witness  
22 room where they won't do anybody any good.

23 JUDGE SIPPEL: Well, I'm -- you just came in the room, so  
24 I'm going to repeat it again. While we were reviewing these 400 and  
25 something exhibits yesterday, we decided that there's a better way



1 to handle it. It was just overwhelming. And we made the cut and we  
2 decided that we could handle it on the record today, plus a  
3 specific order on documents later on in the week that we can get  
4 out. In other words, we're going to rule by virtue of an order.

5 Now, if that doesn't work we may have to come back at  
6 some point for an additional session, but it won't be -- it won't  
7 involve many documents at all; or we may do the alternative, we may  
8 -- as Mr. Stenger suggested -- we may wait until the hearing to  
9 handle the question on admissibility, which is easier to do if you  
10 have a few documents.

11 MR. STENGER: Your Honor, as long as I won't be prejudiced  
12 with regard to any of these rulings, I will be happy to tell my  
13 messenger to leave.

14 JUDGE SIPPEL: I don't see why not, because he's going to  
15 -- I don't even know if they're going to want him hanging around in  
16 the --

17 MR. STENGER: I'll tell him to leave then, Your Honor.

18 JUDGE SIPPEL: Before you do that, does anybody have any  
19 objection to this? Because if you do, I'm going to disappoint you,  
20 but I have no choice. There's no way that we can get business done  
21 today any other way. But if you have a concern, I'd like to hear  
22 it.

23 MS. KANE: Well, Your Honor, the Bureau is confused about  
24 what it is that you're suggesting. Are we not going to go exhibit  
25 by exhibit, or --

1 JUDGE SIPPEL: No, not with 400 and some odd exhibits,  
2 unless you want to stay here until the end of the week without food  
3 or water.

4 MS. KANE: Well, the Bureau -- I think we should certainly  
5 note for the record that Your Honor initially instructed Mr. Havens  
6 to review his exhibits and to provide those exhibits that were  
7 relevant to the matters at issue. Instead, they persisted in  
8 submitting 440 plus exhibits. The Bureau took the resources to  
9 actually go exhibit by exhibit and identify objections based on the  
10 Rules of Evidence to each of those exhibits, to which Mr. Stenger  
11 provided no response. So, I mean, our argument would be, Your  
12 Honor, that none of those exhibits should be admitted other than  
13 the ones to which the Bureau had no objection.

14 JUDGE SIPPEL: Well, we're not there yet.

15 MS. KANE: I understand that, but --

16 JUDGE SIPPEL: Right now this is strictly logistics.

17 MS. KANE: I understand that, Your Honor, but to the  
18 extent that you're not going to rule in that manner, we would feel  
19 the necessity of going exhibit by exhibit at some point before the  
20 hearing. To try to do 440 exhibits at the hearing would waste --

21 JUDGE SIPPEL: No, no.

22 MS. KANE: -- just as much time then. So, I guess I'm  
23 confused --

24 JUDGE SIPPEL: I'm sorry --

25 MS. KANE: -- about how to address the 440 exhibits if

1 we're not going to -- if he's not going to be required -- if you're  
2 not going to just wholesale deny their admissibility at this point  
3 based on their failure to comply with your previous orders, but  
4 require us to go exhibit by exhibit at some point.

5 JUDGE SIPPEL: You're getting ahead of yourself. Wait  
6 until you see what happens.

7 MR. STENGER: May I --

8 JUDGE SIPPEL: No, just a minute. I want to clear this up,  
9 because I recognize your concern. I said we reviewed not -- well,  
10 we reviewed the bulk of the documents and we, after some serious  
11 discussion back and forth and some weeping and wailing, we decided,  
12 myself and my staff, that there's a better way to do this. Okay?  
13 And it's not going to involve going through 400 and some odd  
14 documents either piecemeal or even by grouping. There's going to be  
15 discussion on the record about the grouping aspect of this, and  
16 then there's going to be a detailed -- I say a detailed, I mean an  
17 item by item review, the decision on admission or not of documents  
18 that we have a question about. This may be 100 and some odd  
19 documents. This does not give us concern. We can do that. We can do  
20 that, we think, by the end of the week.

21 The point is that there are a lot of documents that can  
22 be disposed of with very, very little discussion. And that's the  
23 way we're going to do it. We're not going to deny you anything that  
24 you have asked for, except for certain documents. And those  
25 documents you're going to have an opportunity to make your case.



1 But the bulk of the documents we're going to dispose of in a  
2 fashion as you will see, because you did a lot of work, and we paid  
3 attention to the work you did.

4 MS. KANE: We appreciate that, Your Honor. So, at this  
5 point we'll reserve our ability to perhaps object going forward,  
6 but it sounds like we should wait to hear what it is that you're  
7 actually proposing.

8 JUDGE SIPPEL: Yes, I think that's the best approach. Now,  
9 I'm sorry, Mr. Stenger?

10 MR. STENGER: Well, I just want to say a couple of things  
11 on the record. I know that my client has submitted 400 and some  
12 documents, which sounds like a lot of documents. On the other hand,  
13 we're talking about a license revocation hearing that involves a  
14 company that's been in business for a number of years. They  
15 admitted that they discontinued operating some of these stations in  
16 2007-2009, so this is a span of time that's extensive without  
17 elaborating on that.

18 There's also a number of stations involved, 16 stations.  
19 There's also -- at the time that we put those documents together,  
20 there were many other stations involved, and there was a  
21 stipulation that the Bureau and Mr. Keller filed which was to  
22 dispose of many of the other stations and narrow it down to 16.

23 As I read that stipulation, it said that Mr. Keller was  
24 going to follow-up by filing some things in ULS to actually cancel  
25 those licenses, and then --



1 JUDGE SIPPEL: I don't understand what you're saying has  
2 any -- I'm trying to get -- I'm trying to do business here.

3 MR. STENGER: Okay. One aspect of it -- I'm just  
4 explaining why we have so many documents. And one aspect was that  
5 I don't think the situation --

6 JUDGE SIPPEL: I'm not condemning anything that you have  
7 done. All I'm telling you is this is all logistics. How do we  
8 handle it without having to come back, and without being  
9 inconvenienced beyond the fact that we are inconvenienced. I don't  
10 mind inconveniencing lawyers because you get paid for it, but as  
11 time and effort -- I'm worried more about myself and my staff, I  
12 think, right now than I am about anybody else. But we still share  
13 the same interest, and that is find a way to efficiently dispose of  
14 this question. This happens in every big case before any court in  
15 the country. I've been through enough of these cases in so many  
16 jurisdictions, and it's the same problem.

17 MR. STENGER: There's one peculiar aspect of this  
18 situation, Your Honor.

19 JUDGE SIPPEL: Well, that one aspect --

20 MR. STENGER: I want to just --

21 JUDGE SIPPEL: Yes, sir.

22 MR. STENGER: I just want to put it on the record.

23 JUDGE SIPPEL: Yes, sir.

24 MR. STENGER: And that is that in this situation the  
25 Maritime witness direct testimony has been filed by the Bureau, so

1 I know what that testimony is from the Maritime witnesses. And when  
2 I say "Maritime," I'm talking about Sandra DePriest, John Reardon,  
3 Tim Smith, Patrick Trammel, and the so called Assignees. They're  
4 all Maritime witnesses in my view.

5 The direct -- their direct testimony from the Bureau was  
6 given to me on September 16th. However, Mr. Keller has noticed  
7 what I called his own witnesses for cross-examination. I don't  
8 really consider that cross-examination. To me, that's direct  
9 examination when he is examining his own client, his own witnesses.  
10 So, I don't have -- all I'm saying, Your Honor, is that I don't  
11 feel that I have the direct testimony in writing of the Maritime  
12 witnesses, and that's why I'm a little bit at a disadvantage in  
13 terms of narrowing down the documents to what I might want to use,  
14 because I don't know what their testimony is going to be.

15 JUDGE SIPPEL: I told you, you're arguing against your own  
16 case. Don't worry about the documents. We're going to take care of  
17 them.

18 MR. STENGER: Thank you, Your Honor.

19 JUDGE SIPPEL: That's all. I mean, the -- now, I want to  
20 get back to where I was. We're just going to take it one step at  
21 a time, but the steps are going to be big steps, I guess that's one  
22 way of putting it.

23 MR. STENGER: Your Honor, have we concluded that part  
24 where I can tell my messenger to leave at this point?

25 JUDGE SIPPEL: Oh, that's a good question. Yes, I was

1 asking does anybody else have a problem with that in light of the  
2 way we're going to proceed this morning. I have no intention of  
3 touching a binder of documents in the traditional sense of ruling  
4 on admissibility.

5 MS. KANE: Your Honor --

6 JUDGE SIPPEL: And I'm sorry that we didn't get you enough  
7 time. I'm sorry we didn't alert you to this, Mr. Keller.

8 MS. KANE: If we're not going to go exhibit by exhibit, we  
9 have no objection to Mr. Stenger sending his messenger back.

10 JUDGE SIPPEL: Okay.

11 MR. STENGER: I'll do that, Your Honor, then.

12 JUDGE SIPPEL: We're off the record.

13 (Whereupon, the above-entitled matter went off the record  
14 at 10:19 a.m., and resumed at 10:22 a.m.)

15 JUDGE SIPPEL: We're back on the record. Okay. Just as a  
16 note, I received a call yesterday from counsel for Pinnacle wanting  
17 to appear by speakerphone, so I issued an omnibus ruling that  
18 nobody is going to be on the speakerphone this morning. That would  
19 be way too much confusion. So, whatever happened happened, but I  
20 did warn Mr. Havens in a former order that there weren't going to  
21 be any more speakerphone hearings now that we're going into  
22 hearing. And I consider this part of the hearing. And also, that --  
23 because I had made a scheduling error, I allowed the one  
24 exception, the last conference we had to use the speakerphone, but  
25 it's off the table now. I just want to note that, for the record,



1 and for Mr. Havens' benefit, I don't want to get any more time  
2 spent on that.

3 Okay, here is the agenda. First of all, the pending  
4 motions. EVH is Environment -- it's -- what does the V stand for?

5 MR. STENGER: Environmental LLC, Verde Systems, LLC --

6 JUDGE SIPPEL: Yes, Verde and Havens.

7 MR. STENGER: -- and Havens.

8 JUDGE SIPPEL: Yes, and Havens. Okay, so it's all three of  
9 them. And your position on Issue G is a waste of time now. I was  
10 very interested in that representation, and let me get to some  
11 rulings on that.

12 Well, to begin with, you were talking about filing a  
13 motion for summary decision, and I want to refer to an order of  
14 mine and what was said. This is Order -- what is this order? It's  
15 clipped together, I'm sorry. This is Order 14M-22, July 15th, 2014,  
16 where I said specifically, "The parties are cautioned the presiding  
17 judge will not entertain a further motion for summary decision as  
18 three summary decision motions have been filed and considered, and  
19 substantial issues of fact still remain to be heard. The presiding  
20 judge does not see how efficiency could be served by a fourth  
21 motion." And then I cite Section 1.251, "The presiding officer may  
22 take any action deemed necessary to assure that summary decision  
23 procedures are not abused. He may rule in advance of a motion that  
24 the proceeding is not appropriate for summary decision, and may  
25 take such other measures as are necessary to prevent any

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1 unwarranted delay." In other words, I definitely have the  
2 discretion to halt the summary decision practice.

3 Second item, you represent in your proposed discovery  
4 schedule that Issue G exists solely for private purpose to  
5 determine whether Maritime gets paid by PSE to cancel licenses, or  
6 PSE does not have to -- I gather PSE is Puget Sound -- does not  
7 have to pay Maritime because the licenses are cancelled by  
8 operation of the rules. Regardless of whether such hearing ever has  
9 any basis, it is really apparent that a hearing on this issue is  
10 frivolous, provides no basis to delay on discovery of Maritime's  
11 basic qualifications to be a licensee of the geographic auction  
12 licenses at issue under the HDO.

13 Now, that tells me that you think it's a waste of time to  
14 go to hearing on this issue. And what I want to know is does  
15 anybody or everybody else agree with you? Let's start with Mr.  
16 Sheldon since you do refer to -- you've referred to Pinnacle on  
17 that one. Do you want to go to hearing on this?

18 MR. SHELDON: Let me just address it. We don't want to go  
19 to hearing, but it's more than just a private issue of resolving  
20 financial payments between companies. There are certain benefits  
21 that would accrue to Puget Sound Energy by taking assignment of the  
22 Maritime licenses as opposed to cancelling the licenses, so there  
23 is a benefit to Puget Sound in having the issue, the validity of  
24 the licenses resolved at hearing and not merely cancelling the  
25 licenses. It's not the same thing.

1 JUDGE SIPPEL: Okay, I hear you. No, I hear you. Now, what  
2 is the Bureau's reading on that? I mean, you tried -- you and  
3 Maritime tried twice to resolve all this thing by summary decision,  
4 and you were opposed by Mr. Havens. And now Mr. Havens seems to  
5 have reversed course, and says we're not opposed to these things  
6 disappearing, being terminated in other words, or turned in,  
7 whatever you do with them.

8 MS. KANE: I think there's two separate issues on the  
9 table, Your Honor. First, with regard to the PSE issue, that is  
10 separate and apart from whether a hearing should proceed on the  
11 other license -- on the other locations for the other licenses.

12 JUDGE SIPPEL: What do you mean the other, there's 16  
13 licenses --

14 MS. KANE: Right, but PSE is only at issue for five of  
15 those 16 facilities.

16 JUDGE SIPPEL: Oh, I see.

17 MS. KANE: So, there -- if it, in fact, turns out that PSE  
18 is not interested in proceeding to hearing, or that you believe  
19 that Mr. Havens has made an articulated basis for why PSE shouldn't  
20 -- why those five stations shouldn't be at hearing. It's irrelevant  
21 to the other nine that are at issue, or 11 that are at issue. We  
22 would still proceed, we would still encourage proceeding to a  
23 hearing on those issues.

24 With regard to whether there should be a fourth motion  
25 for summary decision, I don't think Mr. Havens has changed course.

1 What I think Mr. Havens is arguing is actually opposite the motion  
2 for summary decision that the Bureau and Maritime jointly filed in  
3 December.

4 We filed a motion in December jointly, and then  
5 additional pleadings in late March, I believe, of last year arguing  
6 that these certain stations should be maintained by the current  
7 lessees for at least 14 of those -- or 16 of those locations.

8 Now, facts have changed since the filing of those with  
9 regard to two, with regard to Evergreen, for example, that the  
10 Bureau would not necessarily take that same position. But Mr.  
11 Havens is arguing that none of those stations should be retained by  
12 the lessees, that all of them should be cancelled, and that, you  
13 know, it would turn, I believe that most of them would revert to  
14 Mr. Havens. So, he's -- although he's arguing that a motion for  
15 summary decision is an appropriate venue or process to resolve  
16 these issues, he's not arguing in the same -- in favor of Maritime  
17 and/or the Bureau's position.

18 JUDGE SIPPEL: Yes, but what -- okay, thank you. No, that  
19 clarifies some -- a lot in my mind. But supposing we just decide to  
20 drop the issue for hearing, we don't want to proceed with -- I  
21 issue some kind of an order that says we're not going to proceed to  
22 hearing on this issue?

23 MR. STENGER: Your Honor, I'd like to --

24 JUDGE SIPPEL: Wait a minute. Let's see what I hear first.

25 MS. KANE: Well, I do believe, pursuant to the HDO, that



1 Your Honor needs to address Issue G in some way or form, so it's  
2 either a hearing or on further motions practice. Your last  
3 instruction to us was that further summary decision motions would  
4 not be efficient, and that you believed, based on your order on the  
5 summary decision motion that Maritime and the Bureau had filed  
6 jointly, that additional facts needed to be brought to hearing,  
7 which is why we proceeded to hearing.

8 I don't think Issue G can simply just be dropped. There  
9 seems to be -- you know, we are under an order from the Commission  
10 to resolve the question of whether those stations were timely  
11 constructed, and whether those stations -- and now that we've  
12 reduced it from 169 facilities to 16, that whether those last 16  
13 stations should be deemed permanently discontinued, or the  
14 operations of them permanently discontinued. That question we are  
15 obligated to respond to pursuant to the HDO.

16 That being said, if Your Honor would prefer to address  
17 that through motions practice rather than a hearing, the Bureau  
18 certainly can accommodate that, but we don't believe that it should  
19 be either on the schedule that's been proposed by EVH's  
20 unauthorized motion for summary decision, to which responses would  
21 be due next Monday. And, likewise, that all parties should have the  
22 opportunity to be filing motions for summary decision, so that  
23 would be counter motions, presumably, from the Bureau and/or  
24 Maritime, any other party who wishes to join that fray. But if  
25 we're going to suspend the hearing and suspend trial briefing, then

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1 we would ask Your Honor to impose a hearing -- a briefing schedule  
2 for summary decision motions to resolve Issue G.

3 JUDGE SIPPEL: All right. Okay, I'm hearing you now. Mr.  
4 Keller -- I'm going to get to you. Don't worry, Mr. Stenger. Mr.  
5 Keller.

6 MR. STENGER: I didn't mean to raise my hand.

7 MR. KELLER: Your Honor, I just want to say a few things.  
8 First of all, right now I'm commenting on the Puget Sound licenses,  
9 the five up in the northwest that we've been talking about -- the  
10 suggestion that the hearing is unnecessary because this is a purely  
11 private matter.

12 Are there private financial matters involved here? Yes,  
13 as there are in most FCC proceedings where there's a dispute  
14 between parties over licenses, but the resolution of Issue G turns  
15 not on how those private financial things come down, they turn  
16 Issue G and what the FCC rules are, and whether the licenses, in  
17 fact, continue in full force and effect, or whether they've been  
18 automatically cancelled by law.

19 To say that we don't need to have a hearing just because  
20 it's purely a private matter is a little bit disingenuous, too,  
21 because the fact of the matter is, as things stand now as I  
22 understand it, if the licenses are cancelled, that works for the  
23 financial benefit of Mr. Havens. If they're not cancelled, and if  
24 they're ultimately not revoked and get assigned to Puget Sound,  
25 that works to the financial benefit of Maritime. So, I mean, both

1 parties have a financial dog in this fight, but that's not what the  
2 hearing is about. The hearing is about Issue G. So, yes, I do not  
3 believe Issue G is either moot, or that it's unnecessary of  
4 resolution on its merits.

5 JUDGE SIPPEL: All right. Well, I - that's loud and clear,  
6 but what seems to be a common interest here is not going to hearing  
7 on Issue G. And there's several ways to handle that. Now, you're  
8 concerned about not having an authorized procedure whereby it's  
9 disposed of, and I share your concern about that. But there is -- I  
10 mean, I don't want to suggest this seriously, but actually, I will  
11 suggest it seriously.

12 There is a process of actually collaborating on a motion  
13 for summary decision between -- among opposing parties in order to  
14 accommodate an outcome of a case. I mean, I've seen it done. I've  
15 seen it done and get broken up because of misrepresentations but  
16 not because the procedure was not authorized.

17 What about -- is there a possibility of coordinating with  
18 Mr. Havens, and Maritime, and the Bureau and coming up with a  
19 common set of facts, or even if Pinnacle wanted to join in, a  
20 common factual background to justify granting summary relief,  
21 because you all want to get to the same place, it seems to me, for  
22 different reasons.

23 MS. KANE: Well, actually, Your Honor, I believe that we  
24 are not all on the same page. As I said, both the Bureau and  
25 Maritime have previously argued that, for the purposes of Issue G,

1 these licenses should be retained by the lessees. Mr. Havens is  
2 arguing completely the opposite. I'm not sure that there would be  
3 an efficient way, unless both the Bureau and Maritime completely  
4 change their positions, which is not -- at least right at this  
5 point I'm not authorized to do that.

6 JUDGE SIPPEL: Go back and check, yes.

7 MS. KANE: For us to join with Mr. Havens to have all of  
8 these licenses deemed permanently discontinued. That's the only way  
9 in which all parties would be able to join in a single motion for  
10 summary decision to resolve Issue G. And I can't speak for  
11 Maritime, I don't know where their position is on that, nor for the  
12 other parties, such as Pinnacle, and Evergreen, I mean, and  
13 Duquesne, and PSE. I don't know whether they, too, would be  
14 interested in joining a motion with Mr. Havens to cancel those  
15 stations.

16 MR. STENGER: Your Honor, may I?

17 JUDGE SIPPEL: Yes.

18 MR. STENGER: I want to go all the way back to the  
19 previous statement that the Bureau made.

20 JUDGE SIPPEL: This is Mr. Stenger.

21 MR. STENGER: Yes.

22 JUDGE SIPPEL: Yes, sir?

23 MR. STENGER: The Bureau said that the Bureau believed  
24 that if the licenses were cancelled that the spectrum would revert  
25 to Mr. Havens. Okay? Now, we were specifically talking about Puget



1 Sound Energy. Okay? I just want to make sure that we're clear on  
2 the facts. If the locations on license KAE889, and there are seven  
3 locations on that license, Puget Sound Energy says that they have  
4 some interest in five of them; two of the locations are outside of  
5 their territory, so they're not even claiming that they have any  
6 use for those two.

7           If the five licenses are cancelled, the spectrum will not  
8 revert to Mr. Havens. Mr. Havens had the geographic area license in  
9 that Pacific Northwest territory, and Mr. Havens sold the  
10 geographic area spectrum to Puget Sound Energy, is my  
11 understanding. And Puget Sound Energy built radio stations as a  
12 geographic area licensees, but they said we want to be able to  
13 build our radio stations wherever we want within our utility  
14 territory. We don't want to have to protect these Maritime site-  
15 based stations, so we're going to buy the site-based licenses from  
16 Maritime. But if the licenses are cancelled, Puget Sound Energy  
17 will get that spectrum as part of its geographic -- I just want to  
18 make that clear.

19           I also want to make clear that there are seven locations  
20 there, not five. Five of them are within PSE; two of them are not  
21 being used.

22           The other thing that I wanted to say to really address  
23 Your Honor's point is that I think we're getting ahead of ourselves  
24 here in terms of which legal conclusions we're going to reach. It's  
25 true that Choctaw filed a motion for summary decision saying that



1 all the licenses should be retained by Maritime. And in response to  
2 Choctaw's motion, the Bureau opposed that. It wasn't Mr. Havens;  
3 the Bureau opposed Choctaw's motion for summary decision. And there  
4 were various summary decision motions that went back and forth.  
5 None of them were filed by my client.

6           At the status conference that we had a month or so ago,  
7 I said that I was going to file a motion for summary decision, and  
8 no one objected at that point. And I filed it after I saw their  
9 direct case. And what I believe we could agree on is the facts. We  
10 may disagree as to what the law is, but I think we can agree on the  
11 facts. I think that Mr. Keller said in his filing last week when he  
12 objected to my witness, Steve Calabrese -- and by the way, I didn't  
13 send away my witness testimony. I just sent away my documents. He  
14 said that Mr. Calabrese, we don't need his testimony because we all  
15 agree that Maritime turned off the stations in 2007 and 2009. And  
16 then Maritime decided to sell the spectrum. Maritime has no  
17 intention of ever putting the stations back on the air; it decided  
18 to sell the spectrum.

19           Now, when you read the testimony of the buyers of the  
20 spectrum, they all say that they have not rebuilt any of the  
21 stations, and they have no intention of ever rebuilding the  
22 stations. In fact, Pinnacle who unfortunately is not here today, so  
23 I'm sorry Mr. Plache can't speak for himself, but Pinnacle said we  
24 have not built the stations. We will never build the stations, and  
25 if we were to build the stations, it would interfere with the radio

1 station that we're operating. That was their testimony under oath  
2 that the Bureau filed. And I won't go through the others, but it's  
3 all the same.

4 Pinnacle is the only one that's still using the spectrum,  
5 as Ms. Kane indicated. Evergreen School District and Duquesne are  
6 not even using it any more, but Pinnacle is using it. So, Pinnacle  
7 -- what Pinnacle is really saying, and what Maritime is saying is,  
8 Maritime is not going to ever rebuild the stations, the buyers are  
9 never going to rebuild the stations. They want to operate what they  
10 call "fill-in stations." That's what Pinnacle says that they're  
11 operating on, a radio system of fill-in stations for the State of  
12 New Jersey. Unfortunately, they didn't put in any testimony from  
13 the State of New Jersey.

14 So, if we all agree on those facts, I'm prepared to argue  
15 the law. My view of the law is that a fill-in station can only  
16 operate within the actual contours of an existing station. And  
17 since they've admitted that there are no existing stations, that  
18 they will not build any -- rebuild the stations, that building the  
19 stations would actually interfere with what they're doing. My  
20 legal analysis reading the cases is that what they're doing is not  
21 a fill-in station.

22 Now, when the Bureau opposed Choctaw's motion for summary  
23 decision, the Bureau cited the same cases that I cited. They cited  
24 the Northeast Utilities case and the Mobex case. And, Your Honor,  
25 in your ruling on June 17th, you said fill-in stations cannot keep